

national; is lawfully admitted for permanent residence; is granted the status of an alien admitted for temporary residence under 8 U.S.C. 1160(a), 1161(a), or 1255a(a)(1); is admitted as a refugee under 8 U.S.C. 1157; or is granted asylum under 8 U.S.C. 1158.

*Worksite* means the location where the nurse is involved in the practice of nursing.

**§ 655.1110 What requirements does the NRDAA impose in the filing of an Attestation?**

(a) *Who may file Attestations?*

(1) Any hospital which meets the definition of "facility" in §§ 655.1102 and 655.1111 may file an Attestation.

(2) ETA shall determine the hospital's eligibility as a "facility" through a review of this attestation element on the first Attestation filed by the hospital. ETA's determination on this point is subject to a hearing before the BALCA upon the request of any interested party. The BALCA proceeding shall be limited to this point.

(3) Upon the hospital's filing of a second or subsequent Attestation, its eligibility as a "facility" shall be controlled by the determination made on this point in the ETA review (and BALCA proceeding, if any) of the hospital's first Attestation.

(b) *Where and when should Attestations be submitted?* Attestations shall be submitted, by U.S. mail or private carrier, to ETA at the following address: Chief, Division of Foreign Labor Certifications, Office of Workforce Security, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Room C-4318, Washington, DC 20210. Attestations shall be reviewed and accepted for filing or rejected by ETA within thirty calendar days of the date they are received by ETA. Therefore, it is recommended that Attestations be submitted to ETA at least thirty-five calendar days prior to the planned date for filing an H-1C visa petition with the Immigration and Naturalization Service.

(c) *What shall be submitted?*

(1) Form ETA 9081 and required supporting documentation, as described in paragraphs (c)(1)(i) through (iv) of this section.

(i) A completed and dated original Form ETA 9081, containing the required attestation elements and the original signature of the chief executive officer of the facility, shall be submitted, along with one copy of the completed, signed, and dated Form ETA 9081. Copies of the form and instructions are available at the address listed in paragraph (b) of this section.

(ii) If the Attestation is the first filed by the hospital, it shall be accompanied by copies of pages from the hospital's Form HCFA 2552 filed with the Department of Health and Human Services (pursuant to title XVIII of the Social Security Act) for its 1994 cost reporting period, showing the number of its acute care beds and the percentages of Medicaid and Medicare reimbursed acute care inpatient days (*i.e.*, Form HCFA-2552-92, Worksheet S-3, Part I; Worksheet S, Parts I and II).

(iii) If the facility attests that it will take one or more "timely and significant steps" other than the steps identified on Form ETA 9081, then the facility must submit (in duplicate) an explanation of the proposed "step(s)" and an explanation of how the proposed "step(s)" is/are of comparable significance to those set forth on the Form and in § 655.1114. (*See* § 655.1114(b)(2)(v).)

(iv) If the facility attests that taking more than one "timely and significant step" is unreasonable, then the facility must submit (in duplicate) an explanation of this attestation. (*See* § 655.1114(c).)

(2) *Filing fee of \$250 per Attestation.* Payment must be in the form of a check or money order, payable to the "U.S. Department of Labor." Remittances must be drawn on a bank or other financial institution located in the U.S. and be payable in U.S. currency.

(3) *Copies of H-1C petitions and INS approval notices.* After ETA has approved the Attestation used by the facility to support any H-1C petition, the facility must send to ETA (at the address specified in paragraph (b) of this section) copies of each H-1C petition and INS approval notice on such petition.

(d) *Attestation elements.* The attestation elements referenced in paragraph (c)(1) of this section are mandated by section 212(m)(2)(A) of the INA (8

## § 655.1111

## 20 CFR Ch. V (4–1–05 Edition)

U.S.C. 1182(m)(2)(A)). Section 212(m)(2)(A) requires a prospective employer of H-1C nurses to attest to the following:

(1) That it qualifies as a “facility” (See § 655.1111);

(2) That employment of H-1C nurses will not adversely affect the wages or working conditions of similarly employed nurses (See § 655.1112);

(3) That the facility will pay the H-1C nurse the facility wage rate (See § 655.1113);

(4) That the facility has taken, and is taking, timely and significant steps to recruit and retain U.S. nurses (See § 655.1114);

(5) That there is not a strike or lock-out at the facility, that the employment of H-1C nurses is not intended or designed to influence an election for a bargaining representative for RNs at the facility, and that the facility did not lay off and will not lay off a registered nurse employed by the facility 90 days before and after the date of filing a visa petition (See § 655.1115);

(6) That the facility will notify its workers and give a copy of the Attestation to every nurse employed at the facility (See § 655.1116);

(7) That no more than 33% of nurses employed by the facility will be H-1C nonimmigrants (See § 655.1117);

(8) That the facility will not authorize H-1C nonimmigrants to work at a worksite not under its control, and will not transfer an H-1C nonimmigrant from one worksite to another (See § 655.1118).

### **§ 655.1111 Element I—What hospitals are eligible to participate in the H-1C program?**

(a) The first attestation element requires that the employer be a “facility” for purposes of the H-1C program, as defined in INA Section 212(m)(6), 8 U.S.C. 1182 (2)(m)(6).

(b) A qualifying facility under that section is a “subpart (d) hospital,” as defined in Section 1886(d)(1)(B) of the Social Security Act, 42 U.S.C. 1395ww(d)(1)(B), which:

(1) Was located in a health professional shortage area (HPSA), as determined by the Department of Health and Human Services, on March 31, 1997. A list of HPSAs, as of March 31, 1997,

was published in the FEDERAL REGISTER on May 30, 1997 (62 FR 29395);

(2) Had at least 190 acute care beds, as determined by its settled cost report, filed under Title XVIII of the Social Security Act, (42 U.S.C. 1395 *et seq.*), for its fiscal year 1994 cost reporting period (*i.e.*, Form HCFA-2552-92, Worksheet S-3, Part I, column 1, line 8);

(3) Had at least 35% of its acute care inpatient days reimbursed by Medicare, as determined by its settled cost report, filed under Title XVIII of the Social Security Act, for its fiscal year 1994 cost reporting period (*i.e.*, Form HCFA-2552-92, Worksheet S-3, Part I, column 4, line 8 as a percentage of column 6, line 8); and

(4) Had at least 28% of its acute care inpatient days reimbursed by Medicaid, as determined by its settled cost report, filed under Title XVIII of the Social Security Act, for its fiscal year 1994 cost reporting period (*i.e.*, Form HCFA-2552-92, Worksheet S-3, Part I, column 5, line 8 as a percentage of column 6, line 8).

(c) The FEDERAL REGISTER notice containing the controlling list of HPSAs (62 FR 29395), can be found in federal depository libraries and on the Government Printing Office Internet website at <http://www.access.gpo.gov>.

(d) To make a determination about information in the settled cost report, the employer shall examine its own Worksheet S-3, Part I, Hospital and Hospital Health Care Complex Statistical Data, in the Hospital and Hospital Health Care Complex Cost Report, Form HCFA 2552, filed for the fiscal year 1994 cost reporting period.

(e) The facility must maintain a copy of the portions of Worksheet S-3, Part I and Worksheet S, Parts I and II of HCFA Form 2552 which substantiate the attestation of eligibility as a “facility.” One set of copies of this document must be kept in the facility’s public access file. The full Form 2552 for fiscal year 1994 must be made available to the Department upon request.

### **§ 655.1112 Element II—What does “no adverse effect on wages and working conditions” mean?**

(a) The second attestation element requires that the facility attest that